

ALAN S. YEE (SBN 091444)  
SIEGEL & YEE  
499 14th Street, Suite 220  
Oakland, CA 94612  
Telephone: (510) 839-1200  
Facsimile: (510) 444-6698

Attorneys for Plaintiff  
JONI BAKER, aka F. JOAN BAKER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JONI BAKER, aka F. JOAN BAKER,  
Plaintiffs,  
vs.  
TARGET CORPORATION, *et al.*,  
Defendants.

NO. C 07-04998 BZ

PLAINTIFF'S REPLY MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
OF MOTION TO REMAND ACTION

Hearing Date: December 5, 2007  
Time: 10:00 a.m.  
Courtroom: G  
Magistrate Judge: Hon. Bernard Zimmerman

I. Defendant's Allegation that Plaintiff's Interrogatory Responses were Deficient Does Not Negate the Fact That Defendant Was Able To Ascertain on August 23, 2007 that this Case Was Removable.

Though Defendant alleges that plaintiff's responses to discovery were incomplete, defendant cannot dispute that sufficient information was provided to defendant in plaintiff's responses to interrogatories "from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b). Defendant does not deny that from those interrogatory responses, defendant can ascertain that plaintiff had aggravated a preexisting C-5-C6 herniated disc in her neck and had undergone surgery to her neck. (Decl. of A. Yee, Exhibit A, interrogatory no. 6.2, page 3 and Exhibit B,

1 response no. 6.2, page 2) Defendant was also able to ascertain that plaintiff continued to  
 2 have neck pain and that plaintiff's physician has recommended a second operation on her  
 3 neck. (Decl. of A.Yee, Exhibit A, interrogatory no. 6.3, page 4 and Exhibit B, response  
 4 no. 6.3, page 3) Defendant was also able to ascertain that plaintiff's wage loss included  
 5 two weeks off beginning April 21, 2005 and then part time until her surgery in July 2005  
 6 and that she did not work from the date of surgery in July 2005 until her return to work  
 7 part time in June 2006, almost one year later. (Decl. of A. Yee, Exhibit A, interrogatory  
 8 no. 8.5 – 8.6, page 4 and Exhibit B, response no. 8.5.-8.6, page 4) Defendant was also  
 9 able to ascertain that plaintiff claimed her wage loss was based on an income loss of  
 10 \$1,446.92 per week. (Decl. of A. Yee, Exhibit A, interrogatory no. 8.7, page 4 and  
 11 Exhibit B, response no. 8.7, page 4). This resulted in a wage loss which exceeded  
 12 \$75,000.00. The fact that there were deficiencies in responses to other interrogatory  
 13 questions, such as how plaintiff's monthly income is calculated, or that there was  
 14 incomplete information concerning the plaintiff's full damage claim such as all medical  
 15 expense resulting from the incident, did not prevent defendant from ascertaining that the  
 16 case was removable.

17 Similarly, the fact the verification to the interrogatories were provided later did not  
 18 prevent defendant from ascertaining from the document that the amount in controversy  
 19 exceeded \$75,000.00. Under the plain language of 28 U.S.C. §1446(b), *any paper* that is  
 20 served or otherwise which comes to the defendant's attention, and shows the matter may  
 21 be removable, begins the running of the thirty days. *Addo v. Globe Life & Accident Ins.*  
 22 *Co.* (5<sup>th</sup> Cir. 2000) 230 F.3d 759, 761-62. 28 U.S.C. §1446(b) is not limited to papers  
 23 filed in the litigation. The reference to "other paper" in the statute includes pre-removal  
 24 correspondence between the parties, including settlement offers. A post-complaint letter  
 25 constitutes "other papers" within the meaning of the removal statute and is consistent with  
 26 the purpose of the removal statute to encourage prompt resort to federal court when a  
 27 defendant first learns that the plaintiff's demand exceeds the federal jurisdictional limit.  
 28 *Id.* at 762. Thus, even a settlement letter is sufficient to provide notice that the amount in

1 controversy exceeded the jurisdictional amount. See *Cohn v. Petsmart, Inc.* (9th Cir.  
2 2002) 281 F.3d 837.840.

3 Here, plaintiff's interrogatory responses, whether or not deficient procedurally or  
4 somehow incomplete, did not negate the fact that defendant was able to ascertain on  
5 August 23, 2007, that the grounds for removal existed.

6  
7 II. Federal Law, Not State Law, Defines the Procedure for The Federal Removal  
8 Statute and As a Result, Defendant's Notice of Removal Was Untimely.

9 If the original complaint was not removable, defendant had thirty days after receipt  
10 "through service or otherwise of a copy of an amended pleading, motion, order or other  
11 paper form which it may first ascertain that the case is one which is or has become  
12 removable." 28 U.S.C. §1446(b) Defendant argues that, because the interrogatory  
13 responses were served by mail, it is entitled to an extension of 5 days within which to file  
14 its notice of removal under California Code of Civil Procedure §1013(a). Thus, defendant  
15 contends that removal was timely because it was made thirty-five days after mailing of the  
16 interrogatory responses. This argument however has been rejected by the Courts,  
17 including this court. Although state law determines when service is made, federal law  
18 defines the procedure for the federal removal statute. See *Chicago, Rock Island & Pacific*  
19 *R.R. v. Stude* (1954) 346, U.S. 574. The time limits in 28 U.S.C. §1446 must be strictly  
20 construed in accordance with the computation principle in Federal Rule of Civil Procedure  
21 Rule 6. *Student A v. Metcho* (N.D. Cal. 1989) 710 F.Supp. 267, 268-269; *Owens v.*  
22 *General Dynamics Corp.* (S.D. Cal. 1988) 686 F.Supp. 827, 829. Federal Rule of Civil  
23 Procedure Rule 6(e) provides that [w]hen a party has the right or is required to do  
24 some act or take some proceedings within a prescribed period after the service of a notice  
25 or other paper upon the party and the notice or paper is served upon the party by mail, 3  
26 days shall be added to the prescribed period. The time began to run upon deposit of the  
27 interrogatory responses in the mail on August 23, 2007 when, under state law, service was  
28

1 complete. Cal.Civ.Proc.Code §1013(a). Therefore, the thirty-three day period expired on  
2 September 25, 2007, two days before defendant filed its notice of removal.

3 III. Conclusion

4 The defendant, as the removing party, bears the burden of establishing the right to  
5 removal. The removal statutes are to be strictly construed, and all doubts about federal  
6 jurisdiction must be resolved in favor of remanding the case to state court. *Shamrock Oil*  
7 *& Gas Corp. v. Sheets* (1941) 313 U.S. 100, 108-109; *Duncan v. Stuetzle* (9<sup>th</sup> Cir. 1996)  
8 76 F.3d 1480, 1485; *In re Business Men's Assur. Co.*, (8<sup>th</sup> Cir. 1993) 992 F.2d 181, 183.  
9 Here, defendant has failed to show that the notice of removal was timely filed as required  
10 by 28 U.S.C. §1446(b). The action must therefore be remanded to the Superior Court of  
11 the State of California for the County of Alameda.

12  
13 Dated: November 14, 2007

SIEGEL & YEE

14  
15 By /S/  
ALAN S. YEE

16  
17 Attorneys for Plaintiff  
JONI BAKER, aka F. JOAN BAKER